



U.S. POSTAL REGULATORY COMMISSION
Washington, DC 20268-0001

Office of the Secretary

January 14, 2013

Karen Toole, City Clerk
City of Climax Georgia
105 Drane Street
Climax, GA 39834

RE: Appeal of the Postal Service's Determination to Close the Climax Post Office,
Climax, Georgia

Dear Ms. Toole

Enclosed please find a copy of a Motion for Late Acceptance and Participant
Statement filed by Morgan Wolaver.

Sincerely,

A handwritten signature in blue ink, appearing to read "Shoshana M. Grove".

Shoshana M. Grove
Secretary

Enclosures

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268

In the Matter of

Docket No.: A 2013-3

Climax, GA 29834

Morgan L. Wolaver, Petitioner

MOTION OF MORGAN WOLAVER FOR
LATE ACCEPTANCE OF PARTICIPANT STATEMENT

(January 11, 2013)

The Petitioner, Morgan Wolaver, hereby moves for permission to file his Participant Statement in the above docket one day late. Mr. Wolaver's undersigned counsel, Harold Hughes, attempted to file the Participant Statement on behalf of Mr. Wolaver on January 10, 2013, the deadline for filing a Participant Statement; however, the procedure for applying for a permanent account for Mr. Wolaver and linking Mr. Hughes as Mr. Wolaver's appointed agent necessitated the delay in filing comments. Late acceptance should not delay the proceeding, nor should any participant be adversely affected by late acceptance of the comments.

Respectfully submitted this 11th day of January, 2013.

/s/ Hal Hughes

Harold Hughes
Michelle Bushman
Ford & Huff LC
10542 South Jordan Gateway, Suite 300
South Jordan, Utah 84095
801-407-8555
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Counsel for Morgan Wolaver

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268

In the Matter of

Docket No.: A 2013-3

Climax, GA 29834

Morgan L. Wolaver, Petitioner

PARTICIPANT STATEMENT

1. The Petitioner, Morgan L. Wolaver, as a Climax postal patron and the former lessor of the Climax Post Office located at 102 W. Broad Street, Climax, Georgia 39834, appeals the Postal Service's de facto closing of the Climax, Georgia post office, which it accomplished when it suspended services in Climax, Georgia, on October 31, 2012.

2. In accordance with applicable law, 39 U.S.C. §404(d)(5), the Petitioner requests the Postal Regulatory Commission to review the Postal Service's de facto closing, and retain jurisdiction at least until a further Administrative Record is available.

3. The Petitioner sets forth the following reasons why he believes the Postal Service's de facto Final Determination should be reversed and returned to the Postal Service for further consideration, or retained for further review:

- a. The suspension of the Climax, Georgia, Post Office is an "emergency" manufactured by the Postal Service to reach its foreordained result: the closing of the Climax Post Office.

Step 1: The Climax Postmaster retired in July, 2012.

Step 2: The Postal Service disclosed its decision to build a Village Post Office (and no one builds a Village Post Office as a temporary or emergency measure).

Step 3: The Postal Service demanded that the lessor reduce his existing lease rate by almost one-third based on a Fair Market Value calculation contrived in bad faith.

Step 4: At the November POSTPlan meeting, the Postal Service represented that the Postal Service was still willing to negotiate a lease with the lessor, but when Mr. Wolaver called postal Real

Estate Specialist McMurray, Mr. McMurray bluntly stated that the Postal Service was not willing to re-enter negotiations.

Step 5: The Postal Service asked the lessor to extend the lease by one month at its proposed, unreasonable rate, but only so that its Village Post Office could be built.

Step 6: The lessor provided Fair Market Value studies based on the usual practices for commercial real estate, and on the method the Postal Service had previously used. Those rates came out to \$10.00 per square foot and between \$10.00 to \$12.00 per square foot. Nonetheless, the lessor offered a below Fair Market Value rate of \$9.50, which the Postal Service refused.

Step 7: The Postal Service has made public comments that the lessor's failure to agree to a termination clause was part of the reason it broke off lease negotiations when, in fact, the original 30-year lease did not even have a termination clause, nor does the lack of a termination clause create unfair economic lease terms.

Step 8: The Postal Service then announced an "emergency suspension" based on the "emergency" it purposefully created.

Step 9: No other suitable space for a post office, or even a contract postal unit, is available in Climax.

Step 10: The current and future result: Climax loses its Postmaster, postal customers must travel to a distant post office, they lose most standard post office services, and instead receive a replacement Village Post Office with inadequate service offerings and no handicap access (see the Participant Statement of Karen Toole, City Clerk).

Finally: When citizens complain and compellingly note the harms to their town, the Postal Services moves to dismiss this proceeding, saying that only a "suspension" is involved, even though a Village Post Office is being built and the closing and termination in Climax is inevitable.

- b. The Postal Service entered into bad faith lease negotiations with the Petitioner during the Summer of 2012. The Postal Service had predetermined that it would no longer lease a building for the Climax Post Office and would instead be setting up limited services in a Village Post Office. While still in negotiations over the terms of the new lease, the Petitioner received a phone call on September 13, 2012, requesting a 30-day extension on the existing lease (but at a significantly lower rate than

the existing lease) so the Postal Service would have time to vacate the building and establish a Village Post Office. Just five days later, on September 17, 2012, the Postal Service posted a notice for the Climax, Georgia, community, informing them of surveys and a meeting to discuss the reduction in hours or discontinuance of the Climax Post Office. The surveys were mailed several weeks later, within a month of the scheduled meeting, and in the meantime the Postal Service, on October 19, 2012, provided another notice "suspending" service at the Climax Post Office starting on October 31, 2012, the same day as the end of the Postal Service's Lease.

- c. The Petitioner notes that by September 13, 2012, the Postal Service already knew it would no longer be operating a full-service post office in Climax, because it had already determined that it would only be providing limited services out of a Village Post Office beginning at least as early as December, 2012. It was disingenuous of the Postal Service to assert, in a "Dear Customer" letter to the Climax, Georgia, community as late as the end of September that it would not make a final decision regarding the Climax Post Office until after the November 8, 2012, community meeting.
- d. The Postal Service did not follow the standard, accepted procedure used to determine the Fair Market Value of the rent at the Climax Post Office. Although the Postal Service's initial offer began at Fair Market Value (\$11.84/SF), it quickly reduced that amount to \$8.50/SF, basing its "fair market value" on an average of all the surrounding postal leases. This method of determining fair market value is contrary to the standard practice in the real estate industry as well as the Postal Service's own past practice. Fair Market Value is a term of art in the real estate industry and is based on the value of comparable real estate, in this case commercial buildings suitable for the Postal Service's needs, of a similar age and size, and with similar improvements and parking area. By taking an average of all the surrounding postal leases, including the lease value of much older, smaller or unimproved buildings, the Postal Service artificially and unfairly reduced the value of the lease in the market. Using the Postal Services own FOIA lease database, the postal leases for buildings in the area with comparable structure and age are between \$10/SF and \$12/SF, which fits the initial offer from the Postal Service. See Comparable Rent Data chart included in City Clerk Karen Toole's Participant Statement.
- e. Although the Postal Service has styled the closing of the Climax Post Office as a temporary suspension while it continues its study, in reality the determination has already been made. It is clear to the Petitioner that the Postal Service will not be re-opening the Climax, Georgia, Post Office, and the Postal Service has already taken steps to make that result inevitable.

- f. The Petitioner believes that this Commission has, and should retain, jurisdiction to review actual determinations by the Postal Service which effectively close a post office, even if that determination is semantically styled as a "suspension."

Respectfully submitted this 11th day of January, 2013.

/s/ Harold Hughes

Harold Hughes

Michelle Bushman

Ford & Huff LC

10542 South Jordan Gateway, Suite 300

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On behalf of Morgan Wolaver